

EXHIBIT 3

WEATHERFORD DECLARATION IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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9 Attorneys for Defendant
Adobe Systems Inc.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
13

14 IN RE: HIGH-TECH EMPLOYEE
15 ANTITRUST LITIGATION

Master Docket No. 11-CV-2509-LHK

16 THIS DOCUMENT RELATES TO:
17 ALL ACTIONS
18
19

DEFENDANT ADOBE SYSTEMS INC.'S
AMENDED RESPONSE TO
PLAINTIFFS' SECOND SET OF
INTERROGATORIES DIRECTED TO
DEFENDANT ADOBE SYSTEMS INC.

20 **CONFIDENTIAL – ATTORNEYS EYES ONLY**
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Pursuant to Federal Rule of Civil Procedure 33, defendant Adobe Systems Incorporated (“Adobe”) hereby amends its response and objections to Plaintiffs’ Second Set of Interrogatories Directed to Adobe Systems Inc.

INITIAL STATEMENT

Adobe’s amended responses and objections to Plaintiffs’ Second Set of Interrogatories Directed to Adobe Systems Inc. are based on information known to Adobe after a reasonably diligent search. These amended responses and objections are subject to change based on additional information that may come to light as a result of discovery and further investigation. Adobe expressly reserves the right to supplement, further amend, or correct any or all of the responses.

GENERAL OBJECTIONS

Adobe asserts the following General Objections. Each individual response is subject to, and is limited in accordance with, the following General Objections.

1. Adobe objects to the “Definitions,” “Instructions,” and each Interrogatory to the extent that they seek to impose obligations beyond those imposed by the Federal Rules of Civil Procedure, Local Rules of this Court, or any order entered by the Court in this action.

2. Adobe objects to each Interrogatory to the extent that it calls for information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, the common interest doctrine, or any other applicable privilege or doctrine. No such information will be produced, and any inadvertent production shall not be deemed a waiver of any privilege or protection. Adobe will refer to this objection as the “Privilege Objection.”

3. Adobe objects to this discovery to the extent it requests information that qualifies for protection under Federal Rule of Civil Procedure 26(c), including without limitation trade secrets, proprietary information, other confidential commercial information or sensitive information or information the disclosure of which is prohibited by federal or state law, rule or regulation. This objection will hereafter be referred to as the “Confidential Information Objection.”

4. Adobe objects to this discovery to the extent that the terms used are so amorphous

1 and overbroad that they either make the request if literally read so overbroad and burdensome as
2 to be unreasonable and beyond the bounds of relevance and/or make it difficult for Adobe to
3 ascertain, with specificity sufficient to allow Adobe to conduct a search, what information
4 Plaintiffs are seeking. This objection will hereafter be referred to as the "Vague and Ambiguous
5 Objection."

6 5. Adobe objects to this discovery to the extent the scope of the Interrogatory is
7 overbroad and burdensome. This occurs when the discovery seeks information that is not
8 reasonably calculated to lead to the discovery of admissible evidence or where the burden of
9 producing the requested information far outweighs their relevance to the claims or defenses or the
10 benefit to plaintiff. This objection will hereafter be referred to as the "Burden Objection."

11 6. Adobe objects to the extent that this discovery violates the applicable procedural
12 statutes or rules to the extent that it is compound, conjunctive or disjunctive, resulting in
13 Plaintiffs' disguising the true amount of discovery they are taking and makes the call of the
14 interrogatory impossible to ascertain. Adobe will treat each subpart as a separately propounded
15 interrogatory. This objection will hereafter be referred to as the "Compound Objection."

16 7. By responding to an Interrogatory with a defined term, Adobe is not by
17 implication agreeing with any such definition.

18 8. Adobe objects to the definition of "agreement" as argumentative, misleading,
19 vague and ambiguous, assuming facts not in evidence, and to the extent it purports to reach a
20 legal conclusion.

21 9. Adobe interprets "cold-calling" and "cold-call" to mean communicating directly in
22 any manner (including, without limitation, orally, in writing, telephonically, or electronically)
23 with a potential employee who has not applied for a job or otherwise initiated contact with the
24 entity making the cold-call.

25 10. Adobe objects to the definition of "co-conspirators" as argumentative, assuming
26 facts not in evidence, and to the extent that it purports to reach a legal conclusion regarding the
27 defendants.

28 11. Adobe objects to the definition of the terms "you," "your," and "your company" in

1 paragraph 17 as overbroad, unduly burdensome, seeking information that is neither relevant nor
 2 reasonably calculated to lead to the discovery of admissible evidence, and seeking information
 3 not in the possession, custody or control of Adobe. Adobe further objects to the extent it purports
 4 to impose a duty on Adobe to obtain information in the possession, custody or control of others,
 5 including third-party entities. Adobe interprets “you,” “your,” and “your company” to refer to
 6 Adobe Systems Inc.

7 12. Adobe objects to the definition of “identify” in paragraph 10 as being compound,
 8 overbroad, unduly burdensome, requesting information not in the possession of Adobe and as
 9 seeking to impose obligations beyond those established by the Federal Rules of Civil Procedure,
 10 Local Rules of this Court, or any order entered by the Court in this action.

11 13. Adobe objects to Instructions 2, 3, and 5 to the extent seeking to impose
 12 obligations beyond those established by the Federal Rules of Civil Procedure, Local Rules of this
 13 Court or any order entered by the Court in this action.

14 14. Adobe objects to the relevant time period identified in the Definition No. 10(a) and
 15 Instruction No. 4 as overbroad and unduly burdensome. For the purposes of Adobe’s responses,
 16 the relevant time period will be January 1, 2004 through March 13, 2009, the date Adobe received
 17 the Civil Investigative Demand from the Department of Justice.

18 19 **SPECIFIC RESPONSES AND OBJECTIONS TO REQUESTS**

20 **INTERROGATORY NO. 15:**

21 Identify each and every allegedly procompetitive collaboration between you and another
 22 company that would not have taken place absent an Agreement between you and any other Co-
 23 Conspirator. For each collaboration identified, state all facts which support your contention that
 24 the collaboration would not have taken place absent an Agreement.

25 **RESPONSE TO INTERROGATORY NO. 15:**

26 Adobe asserts the Privilege, Burden, Vague and Ambiguous, Confidential Information,
 27 and Compound Objections. Adobe objects to this interrogatory to the extent that it calls for a
 28 legal conclusion, seeks expert opinion or purports to set forth or be premised on any legal test.

1 Adobe also objects to this interrogatory as argumentative and to the extent that it assumes that
2 there was an agreement between Adobe and any defendant other than Apple. Adobe further
3 objects to this interrogatory to the extent it calls for speculation, because it asks Adobe to imagine
4 how its extensive and varied collaborations with Apple would have been different if historical
5 facts had been other than they were.

6 Subject to and without waiving these objections and the General Objections, Adobe
7 responds as follows:

8 The non-solicitation policy between Adobe and Apple fostered a close working
9 relationship over the last thirty years, facilitating numerous collaborative endeavors that
10 benefitted consumers with innovation and new and updated products. The companies'
11 collaboration traces back to the early 1980s, when they were both in the early stages of designing
12 computerized publishing and graphics reproduction tools. Working together, they launched the
13 desktop publishing revolution that transformed the publishing industry and the creative arts.

14 Their first collaboration involved Adobe's PostScript, a programming language that
15 enhanced communication between computers and printers. Apple incorporated PostScript into
16 the Apple LaserWriter printer and marketed the combined technology and the Apple-Adobe
17 corporate strategy as the "Macintosh Office." Developing Macintosh Office required top-to-
18 bottom collaboration and coordination between the two companies. Indeed, during this period,
19 essentially all of Adobe's revenue came from Apple, and all of its resources were devoted to the
20 companies' shared vision.

21 The combination of Adobe's software and Apple's hardware transformed the publishing
22 industry, expanding output and consumer choice by giving graphic artists and creative
23 professionals control over the design and production of graphic images. None of this would have
24 been possible without the companies' deep collaboration.

25 After ushering in the desktop publishing revolution, Adobe and Apple continued to
26 collaborate on a series of new and innovative computer technologies. Adobe produced industry
27 leading Creative Suite applications, including its Illustrator and Photoshop software for the Mac.
28 Photoshop was released as a Mac-only product in 1990 and quickly became a key driver for both

1 companies. Adobe also developed Premiere movie editing software; After Effects motion
2 graphics software; PageMill, GoLive, and Dreamweaver web publishing software; InDesign and
3 Pagemaker page layout software; and Acrobat portable document software for the Apple
4 platform. By combining their hardware and software, the companies invented an entirely new
5 medium for the creative professional. All told, Adobe and Apple have executed over 200
6 cooperative agreements.

7 All of these software launches involved close collaboration between the companies on
8 product design and optimization, education and support, and co-marketing and cross-promotion,
9 among other things. Thus, Adobe's numerous creative arts software releases—and the benefits
10 they have provided to consumers—were a result of its close partnership with Apple.

11 The companies' collaboration on PostScript and the creative arts applications, however,
12 did not end after the products launched. Software, hardware, and operating systems do not and
13 did not remain static. Adobe's software titles and Apple's hardware and operating systems have
14 continued to evolve and to incorporate and adapt to new innovation, requiring extensive and
15 continual co-development, training and support. Each new software version, each new OS
16 version, and each new hardware platform and version, has required significant side-by-side
17 engineering and strategic planning. For example, Adobe worked with Apple to support the
18 launch of Apple's OS X operating system; Adobe was given access to that operating system prior
19 to its release, allowing Adobe to develop and deliver Mac OS X applications. Each successive
20 version of the operating system and platform has required additional collaboration and co-
21 development.

22 Adobe also collaborated with Apple on its migration from the PowerPC model to the Intel
23 architecture in 2005. The two companies worked closely to implement the transition, and Adobe
24 again quickly led the development and delivery of software for the new platform. Adobe and
25 Apple engaged in similar joint development and planning to accomplish the transition of Adobe's
26 creative arts desktop software to "apps" for the iPhone and iPod. To support these initiatives,
27 Adobe has shared its key intellectual property with Apple, including the source code of its core
28 products Flash and Photoshop.

1 This partnership and extensive series of collaborations required mutual trust. Soliciting
2 talent is a provocative and disruptive maneuver, particularly soliciting an employee participating
3 in a collaborative endeavor. The companies collaborative efforts, which involved working side-
4 by-side at the highest levels of productivity and innovation, and exposure to each other's most
5 closely-held technologies, confidential roadmaps and key talent, would have been undermined if
6 they felt the need to constantly shield their employees or keep an eye out for ulterior motives. To
7 foster the stability and success of their partnership, Adobe and Apple decided that they would not
8 affirmatively solicit each other's employees. Hiring was never prohibited; only cold calls were
9 restricted. This policy permitted the parties to work closely together while reassuring each
10 company that the other would not use the collaboration as an opportunity to identify and recruit
11 talent.

12 A more limited arrangement or series of arrangements would have been costly and
13 impossible to administer. The Adobe and Apple collaborations have involved broad swathes of
14 both companies, including Adobe's creative design applications, Adobe's Postscript technology,
15 Apple's operating systems, and Apple's hardware. The companies' joint work would often stop
16 and then restart, and expand into unanticipated areas. The extensive, shifting, and long-lived
17 nature of Adobe and Apple's collaborations would have made attempts to limit the scope of their
18 non-solicitation policies complex and administratively costly, if not impossible.

19 It is impossible to say, as a factual matter, what would have happened absent the Adobe-
20 Apple non-solicitation policy. Adobe believes, however, that if the collaboration had happened at
21 all absent the policy, it would not have lasted as long, would not have worked as well or have
22 been as successful if one company or the other had actively solicited the other company's
23 employees. The companies may not have worked as openly and closely together, sharing their
24 most essential technologies and prized innovators, without assurance against active solicitation.

25 Without the collaboration described above, Adobe's products would not have had the
26 same quality or reached as wide of an audience as they did. Adobe depended on Apple's
27 partnership and on its success in the marketplace. The companies had a shared vision for the
28 evolution of visual computing and the intersection of art and technology. Apple computers were

1 originally the only—and are still widely viewed as the optimal—platform for Adobe’s creative
2 products. Consequently, without the policy and the partnership it enabled, considerable
3 innovation and product improvement may have been lost or delayed.

4 **INTERROGATORY NO. 16:**

5 If the Agreement between you and any other Co-Conspirator permitted you to participate
6 in any collaborative joint venture project(s) with another co-Conspirator “freely,” and eliminated
7 “fear that the other company [would] hire away [your] employees,” as you alleged in your Reply
8 Brief, would any of these collaborative joint ventures not have occurred unless the Agreement
9 prevented, hindered, or limited the hiring of one company’s employees by the other? If the
10 answer to this question is “yes,” please state all facts which support your contention. If the
11 answer to this question is “no,” please identify the mechanism or means by which the Agreement
12 allegedly successfully permitted you to participate in each and every specific collaborative joint
13 venture project that you allege would not have occurred absent the Agreement.

14 **RESPONSE TO INTERROGATORY NO. 16:**

15 Adobe asserts the Privilege, Burden, Vague and Ambiguous, Confidential Information,
16 and Compound Objections. Adobe objects to this interrogatory to the extent that it calls for a
17 legal conclusion, seeks expert opinion, or purports to set forth or be premised on any legal test.
18 Adobe also objects to this interrogatory as argumentative and to the extent that it assumes that
19 there was an agreement between Adobe and any defendant other than Apple. Adobe further
20 objects to this interrogatory the extent it calls for speculation, because it asks Adobe to imagine
21 how its extensive and varied collaborations with Apple would have been different if historical
22 facts had been other than they were.

23 Subject to and without waiving these objections and the General Objections, Adobe
24 responds as follows:

25 Adobe and Apple decided that they would not affirmatively solicit each other’s
26 employees. Hiring was never prohibited; only cold calls were restricted. The companies were
27 free to pursue each other’s employees if contacted by those employees directly or indirectly.
28 Indeed, a number of Apple employees left their jobs to join Adobe and vice-versa.

1 Interrogatory No. 15 sets forth how the policy facilitated Adobe's collaboration with
2 Apple.

3 **INTERROGATORY NO. 17:**

4 State all facts which support your contention that an Agreement between you and any
5 other Co-Conspirator facilitated collaborations between you and that Co-Conspirator, and
6 describe the specific mechanism by which the Agreement facilitated such collaboration.

7 **RESPONSE TO INTERROGATORY NO. 17:**

8 Adobe asserts the Privilege, Burden, Vague and Ambiguous, Confidential Information,
9 and Compound Objections. Adobe objects to this interrogatory to the extent that it calls for a
10 legal conclusion, seeks expert opinion, or purports to set forth or be premised on any legal test.
11 Adobe also objects to this interrogatory as argumentative and to the extent that it assumes that
12 there was an agreement between Adobe and any defendant other than Apple. Adobe further
13 objects to this interrogatory to the extent it calls for speculation, because it asks Adobe to imagine
14 how its extensive and varied collaborations with Apple would have been different if historical
15 facts had been other than they were.

16 Subject to and without waiving these objections and the General Objections, Adobe
17 responds as follows:

18 The response to Interrogatory No. 15 sets forth how the policy facilitated Adobe's
19 collaboration with Apple.

20 **INTERROGATORY NO. 18:**

21 Identify and describe any and all steps you took to prevent hiring, poaching, raiding, or
22 soliciting of your employees by competitor companies pursuant to any Agreement(s) or to enforce
23 any Agreement(s) between you and any Co-Conspirator or you and anyone else.

24 **RESPONSE TO INTERROGATORY NO. 18:**

25 Adobe asserts the Burden, Vague and Ambiguous, Confidential Information, and
26 Compound Objections. Adobe further objects to the phrase "hiring, poaching, raiding, or
27 soliciting of your employees by competitor companies pursuant to any Agreement(s)" as vague,
28 ambiguous, and unduly burdensome. Adobe interprets this to request steps taken to enforce the

1 non-solicit policy involving Adobe and Apple. Adobe further objects to this interrogatory as
2 argumentative and to the extent that it assumes that there was an agreement between Adobe and
3 any defendant other than Apple.

4 Subject to and without waiving these objections and the General Objections, Adobe
5 responds as follows:

6 As described above, Adobe and Apple decided not to affirmatively solicit each other's
7 employees. Hiring was never prohibited; only cold calls were restricted. Periodically, Adobe
8 asked its employee recruiters not to cold call Apple employees and distributed a "do not call" list
9 to recruiters that included Apple. The "do not call" list has been produced to Plaintiffs. On at
10 least one occasion, Adobe sent Apple an email about soliciting Adobe employees.

11 **INTERROGATORY NO. 19:**

12 Identify your executives, employees, or agents who have substantial knowledge regarding
13 the effect(s) of any Agreement between you and a Co-Conspirator on your alleged ability to
14 engage in procompetitive collaborations or increase output or production.

15 **RESPONSE TO INTERROGATORY NO. 19:**

16 Adobe asserts the Privilege, Burden, Vague and Ambiguous, Confidential Information,
17 and Compound Objections. Adobe objects to this interrogatory to the extent that it calls for a
18 legal conclusion, seeks expert opinion, or purports to set forth or be premised on any legal test.
19 Adobe also objects to this interrogatory as argumentative and to the extent that it assumes that
20 there was an agreement between Adobe and any defendant other than Apple. Adobe further
21 objects to this interrogatory to the extent it calls for speculation, because it asks Adobe to imagine
22 how its extensive and varied collaborations with Apple would have been different if historical
23 facts had been other than they were.

24 Subject to and without waiving these objections and the General Objections, Adobe
25 responds that the following executives or employees have substantial knowledge regarding the
26 effects of the nonsolicit agreement between Adobe and Apple between January 1, 2003 through
27 the termination of the agreement:

28 Bruce Chizen

1 Shantanu Narayen

2 Digby Horner

3 **INTERROGATORY NO. 20:**

4 List and identify each and every employee, contractor, agent or agency who were
5 terminated or disciplined for violation of an Agreement. For each employee, contractor, agent or
6 agency you identified in response to this interrogatory, identify and describe (a) the Agreement at
7 issue, including its terms and counterparties, (b) the nature of the violation, and (c) the
8 disciplinary or termination action taken.

9 **RESPONSE TO INTERROGATORY NO. 20:**

10 Adobe asserts the Privilege, Burden, Vague and Ambiguous, Confidential Information,
11 and Compound Objections. Adobe objects to this interrogatory to the extent that it assumes that
12 there was an agreement between Adobe and any defendant other than Apple.

13 Subject to and without waiving these objections and the General Objections, Adobe
14 responds as follows:

15 Adobe is unaware of any Adobe employee, contractor, agent or agency who was
16 terminated or disciplined for violation of a non-solicitation policy with Apple.

17 **INTERROGATORY NO. 21:**

18 If the Agreement between you and Apple "facilitated the companies' numerous
19 production collaborations," and/or "advanced the development of a number of game-changing
20 innovations and highly productive joint activities," as you allege in your White Paper, did these
21 allegedly procompetitive effects occur because the Agreement prevented, hindered, or limited the
22 hiring of one company's employees by the other? If the answer to this question is "yes," please
23 state all facts which support your contention. If the answer to this question is "no," please
24 identify the mechanism or means by which the Agreement allegedly "facilitated the companies'
25 numerous production collaborations," and/or "advanced the development of a number of
26 gamechanging innovations and highly productive joint activities."

27 **RESPONSE TO INTERROGATORY NO. 21:**

28 Adobe asserts the Privilege, Burden, Vague and Ambiguous, Confidential Information,

1 and Compound Objections. Adobe objects to this interrogatory to the extent that it calls for a
 2 legal conclusion, seeks expert opinion, or purports to set forth or be premised on any legal test.
 3 Adobe also objects to this interrogatory as argumentative and to the extent that it assumes that
 4 there was an agreement between Adobe and any defendant other than Apple. Adobe further
 5 objects to this interrogatory to the extent it calls for speculation, because it asks Adobe to imagine
 6 how its extensive and varied collaborations with Apple would have been different if historical
 7 facts had been other than they were.

8 Subject to and without waiving these objections and the General Objections, Adobe
 9 responds as follows:

10 Adobe and Apple decided that they would not affirmatively solicit each other's
 11 employees. Hiring was never prohibited; only cold calls were restricted. The companies were
 12 free to pursue each other's employees if contacted by those employees directly or indirectly.
 13 Indeed, a number of Apple employees left their jobs to join Adobe and vice-versa.

14 Response to Interrogatory No. 15 explains how the Adobe-Apple non-solicitation policy
 15 facilitated Adobe's collaboration with Apple and/or advanced the development of a number of
 16 innovations and productive joint activities.

17 **INTERROGATORY NO. 22:**

18 If the Agreement between you and Apple increased or expanded output or "served the
 19 interests of consumers," as you allege in your White Paper, did these allegedly procompetitive
 20 effects occur because the Agreement prevented, hindered, or limited the hiring of one company's
 21 employees by the other? If the answer to this question is "yes," state all facts which support your
 22 contention. If the answer to this question is "no," please identify the mechanism or means by
 23 which the Agreement allegedly "increased or expanded output or "served the interests of
 24 consumers."

25 **RESPONSE TO INTERROGATORY NO. 22:**

26 Adobe asserts the Privilege, Burden, Vague and Ambiguous, Confidential Information,
 27 and Compound Objections. Adobe objects to this interrogatory to the extent that it calls for a
 28 legal conclusion, seeks expert opinion, or purports to set forth or be premised on any legal test.

1 Adobe also objects to this interrogatory as argumentative and to the extent that it assumes that
2 there was an agreement between Adobe and any defendant other than Apple. Adobe further
3 objects to this interrogatory to the extent it calls for speculation, because it asks Adobe to imagine
4 how its extensive and varied collaborations with Apple would have been different if historical
5 facts had been other than they were.

6 Subject to and without waiving these objections and the General Objections, Adobe
7 responds as follows:

8 Adobe and Apple decided that they would not affirmatively solicit each other's
9 employees. Hiring was never prohibited; only cold calls were restricted. The companies were
10 free to pursue each other's employees if contacted by those employees directly or indirectly.
11 Indeed, a number of Apple employees left their jobs to join Adobe and vice-versa.

12 Response to Interrogatory No. 15 explains how the Adobe-Apple non-solicitation policy
13 facilitated Adobe's collaboration with Apple and/or advanced the development of a number of
14 innovations and productive joint activities.

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18 Dated: March 19, 2012

JONES DAY

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20 By: 

Peter Julian

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22 Attorneys for Adobe Systems Incorporated
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PROOF OF SERVICE

I, Pamela Walter, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 California Street, 26th Floor, San Francisco, California 94104. On March 21, 2013, I served a copy of the within document(s):

**DEFENDANT ADOBE SYSTEMS INC'S AMENDED RESPONSE TO
PLAINTIFFS' SECOND SET OF INTERROGATORIES DIRECTED TO
DEFENDANT ADOBE SYSTEMS INC.**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 21, 2013, at San Francisco, California.



Pamela Walter

SERVICE LIST

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